



Member Services Division

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REPLY TO SECTION 714

CalPERS COMMUNITY PROPERTY MODEL ORDER PACKAGE

The purpose of this package is to provide you with information concerning the California Public Employees' Retirement System's ("CalPERS" or "System") procedures for processing and implementing domestic relations orders that are designed to allocate and award a portion of a member's retirement benefits to a nonmember spouse. The following documents are included in this package:

1. CalPERS Procedures to Determine the Status of Domestic Relations Orders
2. CalPERS Instructions for Completion of Model Domestic Relations Order
3. CalPERS Model Domestic Relations Orders:
 - ☐ Model Order A – Separation of Account for members not retired
 - ☐ Model Order B – Division of Benefits for members not retired
 - ☐ Model Order C – Division of Benefits for retired members only

PLAN INFORMATION

The plan administered by CalPERS is a "governmental plan" as defined in section 414(d) of the Internal Revenue Code of 1986, and is not subject to the provisions of section 414(p) of the Internal Revenue Code and section 206(d) of ERISA which govern "qualified domestic relations orders." The terms of the plan are set forth in the California Public Employees' Retirement Law ("PERL"), which can be found at section 20000, et seq., of the California Government Code.

The administrator of the plan is the CalPERS' Board of Administration. The plan is a defined benefit plan and most members contribute a percentage of their salary to the System. Member contributions are separated into individual member accounts and may be withdrawn, with any interest which has accrued, upon permanent termination of CalPERS covered employment. If the member withdraws his or her contributions, the

member will not be entitled to a monthly retirement allowance. If the member does not withdraw his or her contributions, the member may, at retirement, elect to receive an unmodified monthly allowance paid for the life of the member or elect to reduce the allowance and receive one of the optional settlements. The member's contributions, if any, will fund the "annuity" portion of any monthly allowance elected.

The employer also contributes a percentage of the member's salary to the System, and may contract with CalPERS to provide other benefits as well; e.g., certain death benefits. Unlike member contributions, employer contributions are not separated into individual member accounts and are not subject to withdrawal upon termination of CalPERS covered employment. As noted above, if the member has not previously withdrawn his or her member contributions, the member, when eligible, may elect to receive a monthly retirement allowance. The employer contributions are used to fund the "pension" portion of the member's monthly retirement allowance. On the other hand, if the member does withdraw his or her member contributions, the member will not receive a monthly retirement allowance or the benefit of any of the employer contributions which were made on the member's behalf.

The Public Employees' Retirement Law (PERL) is complex. The above description of the plan is merely intended to summarize how the plan operates. For a complete description of the plan, the parties and their respective counsel are strongly advised to review the PERL and the appropriate member booklet. The member booklet provides a summary of the various benefits available to the member. If one was not included with this package, you may request a member booklet from any CalPERS office.

CALPERS' MODEL DOMESTIC RELATIONS ORDER PACKAGE

In accordance with applicable law, CalPERS has determined that it is in the best interest of the System, its members, and their spouses to provide for certain procedures designed to efficiently and effectively process and implement domestic relations orders that require the System to allocate and assign a portion of a member's benefits to his or her nonmember spouse. A domestic relations order ("order") will only be processed if such order is acceptable under the terms of the PERL and other applicable law.

The enclosed procedures are designed to inform you of the steps that CalPERS will undertake to process any order you may submit. The model domestic relations order is intended as a sample only and is provided to assist you in the preparation of an order that is acceptable to CalPERS. You may, of course, use other language; however, any order must be consistent with the terms of the PERL. In the event that CalPERS determines that an order is not consistent with the terms of the PERL, CalPERS will require that the parties modify the order in all necessary respects.

The instructions for completing the model domestic relations order provide some additional information regarding the options available for dividing the community's interest in a member's benefits.

REQUEST FOR INFORMATION / CONFIDENTIALITY

By law, the contents of a member's retirement file are confidential, except to the member or his or her authorized representative. The member's spouse and/or the attorney may obtain information, if the request includes the member's written authorization or if CalPERS has been joined as a party to the dissolution. To obtain the information, the System must receive either:

1. A Subpoena Duces Tecum. Upon receipt of a subpoena, the contents of a member's file will be photocopied and the requested calculations completed. Pursuant to section 1563 of the California Evidence Code, the System charges \$10 an hour clerical costs, plus \$.10 per page copying costs. This amount represents actual costs incurred in locating and making the records available. The System will accept service of subpoena by mail, if joined. If not joined, we require personal service of the subpoena which may be personally served to our Legal Office at 400 P Street, 3rd Floor, Sacramento, California 95814. Please be sure to include a Proof of Service and Notice to Consumer; **OR**

2. A written request outlining the specific data needed. **All correspondence with CalPERS must include the member's name and Social Security number.** Upon receipt of a written request, CalPERS may provide the following information:

- A statement as to the member's accumulated contributions and interest for a specified period. If specific dates are not requested, a current statement will be provided. Due to agencies' reporting requirements, a current statement will reflect contributions two to four months in arrears.
- A statement as to the member's years of service credit. Again, if a specific period is not requested, a current statement will be provided.
- A statement as to the membership classification; i.e., safety or miscellaneous member, state or local member, and the applicable benefit formula.
- A statement as to retiree's option selected at retirement, the beneficiary designated, the amount of monthly allowance and any death benefit payable.

CalPERS will not provide:

- Actuarial valuations of retirement benefits. Although a private actuary may provide a valuation of the pension plan, CalPERS will not accept an order which provides for payment of benefits not authorized by the Government Code.
- Employment data, salary, payroll, and earnings or personnel records. You must contact the employer directly for this information.

HEALTH BENEFIT INFORMATION

This information applies only to members or retirees enrolled in a CalPERS-sponsored health plan under the Public Employees' Medical and Hospital Care Act (PEMHCA).

The nonmember spouse loses eligibility for health benefit coverage under the member's insurance at midnight the last day of the month in which the marriage terminated. The nonmember spouse may, however, elect to continue coverage under the employer's group health plan at his or her own expense for a period of up to 36 months from the date coverage would otherwise be lost as a result of the divorce pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, ("COBRA").

For more information regarding COBRA rights, please contact the member's Personnel Office if the member is currently employed under a PEMHCA agency. If the member is retired and has CalPERS-covered insurance, please contact:

Health Benefit Services Division
P.O. Box 942714
Sacramento, CA 94229-2714
Telephone: (888) 225-7377

The nonmember spouse may also obtain health insurance by requesting a conversion policy underwritten by the member's current health benefits plan or insurance carrier. The nonmember spouse should contact the carrier within 30 days of the termination date of group coverage for information on the coverage and cost of the policy.

It is the responsibility of the employee or retiree to report a dissolution of marriage which results in the loss of insurance coverage for the nonmember spouse to their personnel office or, if retired, to CalPERS, within 60 days of the date that the marriage was terminated. Otherwise, there is no eligibility for COBRA coverage.

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The CalPERS Community Property Unit in the Member Services Division is responsible for processing domestic relations orders. If you have any questions regarding the enclosed documents or CalPERS' procedures for processing domestic relations orders, please contact:

California Public Employees' Retirement System
Attn: Community Property Unit
P.O. Box 2056
Sacramento, CA 95812-2056

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Telephone: (916) 795-3551
Fax: (916) 795-3389

PROCEDURES FOR PROCESSING CalPERS DOMESTIC RELATIONS ORDERS

The plan administered by the California Public Employees' Retirement System ("CalPERS" or "System") is a "governmental plan" as defined in section 414(d) of the Internal Revenue Code of 1986, as amended ("Code") and section 3(32) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and is thus not subject to the provisions of section 414(p) of the Code and section 206(d) of ERISA which govern "qualified domestic relations orders." See Code section 401(a) (final paragraph of the section); Code section 411(e)(1)(A) and ERISA section 4(b)(1). The terms of the plan are set forth in the California Public Employees' Retirement Law ("PERL"), which can be found at section 20000, et seq., of the California Government Code.

The administrator of the plan is the CalPERS' Board of Administration. A domestic relations order ("order") that is designed to allocate and award a portion of a member's retirement benefits to his or her nonmember spouse will only be processed if such order is acceptable under the terms of the PERL and other applicable law.

CalPERS has determined that it is in the best interests of the System, its members and their spouses to provide certain procedures designed to efficiently and effectively process such orders.

CalPERS shall review and administer all orders received with respect to benefits provided by the System. When administratively practicable, CalPERS shall act pursuant to the following procedures:

I. Procedures Prior to Receipt of an Order

- A. Section 755 of the California Family Code provides, among other things, a procedure whereby a person who claims an interest in a member's retirement benefits ("nonmember spouse") may seek to protect that interest by providing written notification to CalPERS of such interest.
- B. CalPERS must be joined as a party to the applicable proceeding, in accordance with California Family Code sections 2060-2074. CalPERS should not be joined if the dissolution action is filed in a state other than California.

- C. Upon receipt of notice of a claim under section 755, a properly filed summons (joinder), or a proposed (draft) court order, CalPERS shall notify both parties, or their representatives, in writing, of the receipt of such notice, joinder or order, along with a copy of these procedures and shall not permit any distributions from the affected member's benefits unless and until such time as the claim has been resolved to the satisfaction of CalPERS or CalPERS has received an acceptable filed court order.
- D. Upon receipt of a claim, joinder, or order which proposes to divide a retired member's pension, **CalPERS will continue to pay the retired member one-half of his or her retirement allowance** pending receipt of a filed court order or other resolution of the community property claim. The party, who placed the claim, filed the joinder or submitted the proposed order, may notify CalPERS in writing to continue to pay the full allowance to the member. However, if full benefits continue to be paid to the member, any benefit awarded to the nonmember spouse will be paid on a prospective basis after the filed court order has been received and approved by CalPERS.

II. Procedures Upon Receipt of a Proposed or Draft Order

- A. Upon receipt of a proposed or draft copy of an order, CalPERS shall:
 - 1. If the provisions of the order are acceptable, CalPERS shall notify all persons named in the order and their attorneys ("interested parties") that a determination has been made that the order is acceptable. If an original order is submitted requiring CalPERS signature, the order will be signed by CalPERS staff and returned to the requesting party for filing with the court. **Please note that although CalPERS' model order includes a signature block for the approval of the order by CalPERS staff, we will sign the order only after it has been signed by both parties.**
 - 2. If the order is not acceptable, CalPERS shall notify all interested parties that a determination has been made that the order is not acceptable. The notice shall state the reason the order is not acceptable to CalPERS.

III. Procedures Upon Receipt of a filed Court Order

- A. Within 30 days of receipt of a filed order, CalPERS shall make a final determination as to whether or not the order is acceptable.
 - 1. If the order is acceptable, CalPERS shall follow the terms of the order as soon as administratively practicable following the date CalPERS determines that the order is acceptable and shall notify all interested parties in writing that such order is acceptable.

2. If a final determination is made that the order, as written, is not acceptable, CalPERS shall so notify all interested parties. CalPERS shall require the parties to take any such action as is necessary to modify the order.

IV. Supplemental Procedure

- A. CalPERS is authorized to take whatever action it deems appropriate to arrive at a final determination as to the status of each order. In general, CalPERS shall determine whether the order, as written, can be effectively administered pursuant to the terms of the PERL. In accordance with the foregoing, all interested parties shall promptly respond to any request by CalPERS for additional information or documentation. Any failure to provide such information or documentation will delay the determination process.
- B. The order must be acceptable to CalPERS at the time benefit distributions to either party are to commence. CalPERS shall review the order and confirm that the order is acceptable prior to the time benefit distributions are to commence. It shall be the responsibility of the parties to advise if the order has been amended subsequent to the Board's initial determination that the order was acceptable.
- C. All written communication with the member and the nonmember spouse or other interested party shall be sent by first class mail to the addresses provided in the order or to the address maintained by CalPERS, unless CalPERS receives written notice of a change of address.

INSTRUCTIONS FOR COMPLETION OF MODEL DOMESTIC RELATIONS ORDER

Enclosed with these instructions is a model domestic relations order ("model") prepared by the California Public Employees' Retirement System ("CalPERS" or "System"), which offers provisions that conform with the benefit provisions of the Public Employees' Retirement Law ("PERL"), section 20000, et seq., of the California Government Code, and other applicable law.

Completion of the model will expedite the process for determining whether a domestic relations order can be administered by the System and will ensure that the provisions of such order conform with the PERL. The model order is to be used as a guide when preparing an order to divide the retirement benefits of a CalPERS member. **The model is not to be used as a fill in form.**

The model is only intended to provide suggested language. The parties may, of course, agree to, or a court may order, other language, provided the ultimate order is consistent with the terms of the PERL and other applicable law. The parties and their respective counsel are also advised to review the applicable provisions of the PERL and the applicable member booklet, which provide a summary description of the benefits to which a member in a particular employment category may be entitled. Some benefits described in the booklet may only apply to a given member if his or her employer has contracted with the System to provide such benefits. The parties and their counsel are responsible for determining exactly what benefits a member is entitled to and how each method available for dividing those benefits will affect those benefits. This sample order is not, nor can it be, a substitute for reviewing the terms of the PERL and the applicable member booklet. The System does not provide legal, tax or other advice regarding the division of a member's benefits.

As you will note, the provisions of the model reflect California community property law and may need to be revised to accommodate other state domestic relations laws.

As discussed in more detail below, the model contains three separate ORDERS which may be used to divide the community property interest in a CalPERS member's pension plan. These will be referred to as ORDER A, B and C. ORDER A and B apply only to members who have not yet retired. ORDER C applies to retired members ONLY. All three ORDERS are included as samples only. When the actual ORDER is filed, only one of the sample orders, EITHER A, B, OR C, should be included in the final package.

INSTRUCTIONS

The initial blanks on page one of the model must be completed as provided by the court with respect to case number, matter of the marriage, judicial district, county and date. Also note that in the first full paragraph of the model, counsel must provide the names of petitioner and respondent. Important information relative to the System is as follows:

Governing Law: California Public Employees' Retirement Law, section 20000, et seq., of the California Government Code

Administrator: Board of Administration of the California Public Employees' Retirement System

Address: California Public Employees' Retirement System
Member Services Division
Attn: Community Property Unit
P.O. Box 2056
Sacramento, CA 95812-2056

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Telephone: (916) 795-3551
Facsimile: (916) 795-3389

Type of Plan: Defined Benefit Plan

The model is designed to allocate and award a nonmember spouse a portion of a member's interest in the System. The model is broken down into three sections, Recitals, Stipulation and Order. These instructions follow that format.

RECITALS

Paragraph 1: Indicate the date of marriage, the date of separation and the date the court entered a judgment of dissolution of marriage (if applicable).

Paragraph 2: States that the court has personal jurisdiction over both the Petitioner and Respondent and the subject matter of the action.

Paragraph 3: States that the System was properly joined as a party to the action pursuant to sections 2060 through 2065 of the California Family Code (if applicable).

STIPULATION

A stipulation by the Respondent, the Petitioner and the System that this domestic relations order is acceptable under the terms of the PERL and can be administered by the System. For more information refer to the PERL and the applicable member booklet.

ORDER

Paragraph 4: Provides that the domestic relations order was entered pursuant to the California Family Code. If this is not the appropriate cite for the order, please cite the applicable domestic relations law pursuant to which the order is to be entered.

MEMBERS WHO HAVE NOT YET RETIRED: ORDER A OR ORDER B

There are two methods by which the community property interest of a CalPERS member who has not yet retired may be divided; both methods are provided for in the model and explained in these instructions for completing the model. However, it is the sole responsibility of the parties and their respective counsel to determine which method would be the most advantageous based upon the parties' obligations, needs, and desires.

ORDER A

DIVISION OF MEMBER'S ACCUMULATED CONTRIBUTIONS AND SERVICE CREDIT BY SEPARATION OF ACCOUNT

The first method is an order made pursuant to sections 2610 (c) of the Family Code and sections 21290 through 21298 of the Government Code which allow the community property interest in a member's pension to be divided by separating the service credit and member contributions accrued during the marriage into two separate and distinct accounts, one in the name of the member and one in the name of the nonmember spouse. **The parties and their respective counsel are advised to review sections 21290 through 21298 of the Government Code for a complete description of this method of dividing a member's account.**

If the member was vested on the date of dissolution, the nonmember would have the right to receive a monthly allowance from the nonmember account, independent of the member, when both reach the minimum retirement age. The monthly allowance payable to the nonmember spouse would be based on the service credited to the nonmember account, the nonmember's age at retirement and the salary (final compensation) earned by the member prior to the dissolution of the marriage.

In lieu of a monthly allowance, the nonmember spouse would have the right to withdraw, by direct refund or rollover, the member contributions and interest credited to the nonmember account, plus interest earned at 6% per year through date of payment. The taxable portion of the benefit would be subject to 20% federal withholding, unless it was rolled over to an IRA. If the member was not vested on the date of dissolution, the nonmember's only right would be to withdraw his or her contributions by a direct refund or rollover.

Some CalPERS members, such as State Miscellaneous Second-Tier, do not contribute to CalPERS. In that case, there would be no contributions available for the nonmember to refund. The nonmember could receive a monthly allowance, when eligible, but only if the member was vested on the date of the parties' dissolution of marriage.

If the nonmember chooses to withdraw the contributions and interest credited to the nonmember account, the member would have the right to purchase that service credit and redeposit those contributions, plus interest, in order to restore the service credit and contributions to the member account. Any such election to redeposit the contributions and service must be made prior to a member's retirement. If, however, the nonmember chooses to leave the funds on deposit or if the nonmember elects to receive a monthly allowance, the member cannot purchase the contributions and service credit transferred to the nonmember account.

After a separation of account occurs, the benefits payable to the member at retirement or payable upon the member's death prior to retirement will be based on the actual service credit and/or contributions remaining in his or her member account.

However, Government Code section 21251.15 provides for a new calculation method for any member whose account was divided in accordance with Government Code 21290 and who retires on or after January 1, 2004, if the nonmember spouse **1)** qualifies to retire from the nonmember account **and 2)** has NOT received a refund prior to the member's retirement date. The new calculation provides that a member's retirement allowance shall be equal to the **difference** between **1)** the allowance that would have been payable to the member had the separation of the account not occurred, and **2)** the unmodified allowance payable to the nonmember spouse, less an actuarial adjustment if the nonmember spouse retires before the member. For further information, please refer to Government Code 21251.15, or contact the Community Property Unit directly.

PARAGRAPHS 5 THROUGH 10 OF ORDER A ILLUSTRATE THIS METHOD OF DIVIDING THE COMMUNITY PROPERTY INTEREST IN A CalPERS PENSION:

Paragraph 5: States that the parties have a community interest in the member's pension plan and defines that interest as the member's accumulated retirement contributions and service credit attributable to periods of service in the System from the parties' date of marriage up to the date of separation.

Paragraph 6: States that 50% of the member's accumulated retirement contributions and service credit is to be allocated and awarded to the nonmember spouse as his or her "System Interest." The order may specify a percentage higher or lower than 50%, provided that such percentage is acceptable to CalPERS. Paragraph 3 also provides that any contributions and service credit not awarded to the nonmember spouse shall be the sole and separate property of the member.

CalPERS WILL NOT accept an order, entered in accordance with Government Code sections 21290 through 21298, which provides for either a specific dollar amount or specific years of service credit to be used to establish the nonmember spouse's interest, or which attempts to divide only contributions without service credit.

IMPORTANT INFORMATION REGARDING ELECTIVE SERVICE CREDIT for Model Order A: *All community property, including the issue of elective service credit, needs to be specifically addressed in the court order. Unless otherwise provided for in the order, any elective service credit and contributions, such as military service, service prior to membership, redeposit of previously refunded contributions, or additional retirement service credit will be divided according to when the service and contributions were credited and paid to the member's account. For example, if the member earned military service credit prior to his or her marriage, **but elected and paid for that service during the marriage**, CalPERS would divide the service and contributions proportionately to both the member and nonmember. If elective service credit is not addressed in the court order, any service purchased or redeposited after the date of marital separation, will be treated as the member's separate property.*

Paragraph 7: In accordance with section 21290 of the Government Code, paragraph 7 provides that CalPERS shall establish separate accounts for the member and the nonmember for the interests awarded to each of them pursuant to paragraph 6 of the order.

Paragraph 8: Following the date that separate accounts have been established for the member and the nonmember spouse, paragraph 8 provides that the nonmember spouse shall be entitled to all rights permitted under section 21290(c) of the California Government Code, as summarized in paragraphs 8.a. through 8.e. The parties and their respective counsel are once again advised to review the provisions of the Government Code affecting the rights of the nonmember spouse with respect to his or her System Interest.

Paragraph 9: Illustrates how the parties may provide for the nonmember spouse's interest to go to a beneficiary if the nonmember spouse should die prior to receiving his or her System Interest.

Paragraph 10: Provides, in accordance with section 21292(g) of the Government Code, that the nonmember spouse will receive a refund of the nonmember spouse's accumulated contributions and any interest that has accrued to such contributions, as soon as administratively practicable, following the date an account was established for the nonmember spouse if the member did not have the necessary minimum credited service to retire as of the parties' dissolution or legal separation.

Paragraph 11: **SUPPLEMENTAL PROVISIONS:** Apply to orders A, B and C. Please refer to page 19 for instructions on paragraph 11 through 21.

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ORDER B
DIVISION OF COMMUNITY PROPERTY INTEREST
AT THE TIME BENEFITS BECOME PAYABLE TO THE MEMBER
- TIME-RULE METHOD -

The second method used to divide the community property interest in the pension plan of a CalPERS member who has not yet retired, provides for the nonmember spouse to receive his or her community property interest at the time benefits become payable to the member. Benefits become payable to a member only upon the member's retirement or termination of membership. Pursuant to sections 2610(a) and (b) of the Family Code, the court may also order the division of any benefits payable upon the death of the member and/or order the member to elect a survivor benefit annuity or other similar election for the benefit of the nonmember spouse.

Under this method of dividing community property, the nonmember spouse's "System Interest" can **only** be paid by CalPERS at the time that benefits become payable. If the nonmember spouse wishes to receive his or her community property interest from CalPERS prior to the time that benefits become payable, the parties should consider using ORDER A: DIVISION OF MEMBER'S ACCUMULATED RETIREMENT CONTRIBUTIONS AND SERVICE CREDIT BY SEPARATION OF ACCOUNT.

IMPORTANT INFORMATION REGARDING ELECTIVE SERVICE CREDIT for Model Order B: All community property, including any elective service credit, must be specifically addressed in the court order. Unless otherwise provided for in the order, any elective service credit and contributions, such as military service, service prior to membership, redeposit of previously refunded contributions or additional retirement service credit will be applied to the calculation according to when the service and contributions were credited and paid to the member's account. For example, if the member earned military service credit prior to his or her marriage, **but elected and paid for that service during the marriage**, CalPERS would consider this service as having been earned during the marriage. If elective service credit is not addressed in the court order, any service purchased or redeposited after the date of marital separation, will be treated as the member's separate property for purposes of calculating the nonmember spouse's "system interest." Although any additional service credit may be treated as the member's separate property, the purchase of elective service credit will usually result in an increase in the benefit upon which the nonmember's spouse's "system interest" is applied.

PARAGRAPHS 5 THROUGH 10 OF ORDER B ILLUSTRATE THIS METHOD OF DIVIDING A MEMBER'S BENEFITS:

Paragraph 5: States that the community has an interest in the member's retirement benefits and defines that interest as those retirement benefits attributable to the member's service in the System during the period from the parties' date of marriage up to the date of separation.

Paragraph 6: Illustrates how the nonmember spouse's share of the member's retirement benefits may be calculated. This is the usual, although not required, language encountered with this method for dividing a member's benefits and is commonly referred to as the "time rule." This benefit allocation formula is only an example. The parties may, of course, provide another method (or percentage) of allocating the member's retirement benefits provided the method is consistent with the terms of the PERL and other applicable law. Paragraph 6 also illustrates how the parties may provide for CalPERS to divide all benefits payable pursuant to the formula provided in this order.

Benefits, for purposes of this order, include a refund of the Member's accumulated retirement contributions, service retirement, disability retirement, industrial disability retirement, and/or any death benefits payable, as provided in paragraph 9 a. and b. of the ORDER.

*California case law **may** exempt certain disability retirement benefits from community property considerations; thus, it is the parties' responsibility to determine the appropriate division of any disability or industrial disability pension and modify this order accordingly. In this model, **unless** the parties modify the order to the contrary, the community property percentage will be applied to all benefits, including disability or industrial disability retirement allowances. The parties may, of course, agree to provide for the division of only certain benefits or certain types of retirement or modify this paragraph to reflect the wishes and desires of the parties or to reflect case law which may be appropriate to an individual case. CalPERS will comply with the provisions of any order to the extent provided in the Government Code. The court cannot order CalPERS to pay a benefit not provided for, or which is contrary to the PERL.*

Paragraph 7: Requires the member, at retirement, to select optional settlement four (4) and name the nonmember spouse as the beneficiary **to the extent of the nonmember spouse's community property interest**. The community property interest shall be determined by CalPERS at the time the member retires using the method described in paragraph 6. This method insures that the nonmember spouse will receive a lifetime benefit equal to his or her community property interest.

The selection of option four will not jeopardize the member's right to name another lifetime beneficiary *for any remaining option portion*. The member can make this request at the time of retirement. There are some plan limitations which may affect the amount available to a **second lifetime** beneficiary under this option.

THE ACTUAL ELECTION OF AN OPTIONAL SETTLEMENT CAN ONLY BE MADE BY THE MEMBER AT THE TIME OF RETIREMENT AND ONLY IF BOTH PARTIES ARE LIVING. IT IS THE MEMBER'S RESPONSIBILITY TO COMPLY WITH THE TERMS OF THIS ORDER AT THE TIME OF RETIREMENT.

The parties may, of course, agree to elect one of the other optional settlements available to the member at retirement, such as optional settlements 2, 2W, 3, or 3W. If the order specifies that the member is to select one of these options **at retirement** and designate the nonmember spouse, then the nonmember spouse will be the **only beneficiary to receive benefits at the member's death with respect to that benefit**. The amount available to the nonmember spouse under options 2, 2W, 3, and 3W will be determined based on the combined ages of the member and beneficiary, not on the amount of the nonmember spouse's System Interest. The parties should carefully consider how this may affect future choices before selecting this method to provide a lifetime benefit to the nonmember spouse.

If the member is not required to provide the nonmember spouse with a continuing monthly allowance, paragraph 7 may be deleted. If deleted, the nonmember spouse's System Interest would be applied to the member's monthly retirement allowance, while living, and to the death benefits after retirement as provided in paragraph 9.b.

Paragraph 7 is not applicable if the member dies prior to retirement as discussed in paragraph 9. a. or if the member terminates membership and receives a refund of his or her contributions and interest. In addition, paragraph 7 is not applicable if the nonmember spouse predeceases the member prior to retirement.

Paragraph 8: Provides for the nonmember spouse to receive his or her "System Interest" directly by separate warrant at the time the member receives benefits or as soon as administratively practicable following the member's death.

Paragraph 9: Illustrates how the parties may provide for the nonmember spouse to receive a share of any benefits payable at the member's death. Paragraph 9. a. provides for the nonmember spouse to receive his or her System Interest in the event of the **member's death prior to retirement**. Paragraph 9.b. provides for the nonmember spouse to receive his or her System Interest in the event of the **member's death after retirement**.

Paragraph 9.a. Specifically provides for the nonmember spouse to receive his or her "System Interest" in **any** death benefit payable upon the death of a member **prior to retirement**. Unless the order provides otherwise, CalPERS will pay to the nonmember spouse his or her System Interest from any benefit otherwise payable at the time of the member's death. This includes any lump sum or monthly allowance which may be payable by designation or by statute. Any choice regarding the type of benefit payable (lump sum or monthly) will belong to the person (or persons) determined to be entitled to those benefits. The nonmember spouse cannot be designated as a surviving spouse and **WILL NOT** receive a monthly allowance based on his or her life expectancy.

The parties and their counsel may wish to review the applicable member booklet to determine which of the **pre-retirement death benefits** are applicable with respect to the member. The **pre-retirement death benefits** vary for a number of reasons, including the member's employment status, the employer's contract with CalPERS, whether the member is vested, and whether the member is legally married or has minor children at the time of death.

Paragraph 9.b: Provides for the nonmember spouse's "System Interest" in any lump sum death benefit payable upon the death of the member after retirement. Paragraph 9.b. also provides for the nonmember spouse to receive his or her "System Interest" in any monthly allowance payable after the death of the member, unless the nonmember spouse is entitled to receive a monthly benefit for his or her own life based on the member's election and designation of the nonmember spouse as a beneficiary under optional settlement 2, 2W, 3, 3W or 4.

If authorized by the court order, CalPERS will divide any benefit payable after the member's death, including any monthly allowance, but only as long as those benefits are payable. Of course, if there are no benefits payable after the member's death, there will be no benefits from which to pay the nonmember spouse's System Interest.

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| A NONMEMBER SPOUSE CANNOT BE CONSIDERED A "SURVIVING SPOUSE" FOR ANY PURPOSE UNDER THE PERL. |
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The parties and their counsel may wish to review the applicable member booklet in order to determine which of the **post-retirement death benefits** are applicable with respect to the member. The post-retirement death benefits vary for a number of reasons, including the member's election at retirement, the employer's contract with CalPERS and whether the member has a "surviving spouse" or minor children.

Paragraph 10: Illustrates how the parties may provide for the nonmember spouse's "System Interest" to be paid to a beneficiary if the nonmember spouse should die prior to the member. Should the parties elect to make such a provision, CalPERS must be provided with the beneficiary's name, current mailing address and Social Security number. If such beneficiary predeceases the nonmember spouse, any "System Interest" shall be paid to the nonmember spouse's next of kin as provided under Government Code section 21493. If the nonmember spouse dies before the member has retired, his or her System Interest will be paid to such beneficiary, if living, from any monthly allowance payable when the member retires, from any refund of contributions payable when the member terminates membership, or from any Pre-Retirement Death Benefits if the member should die prior to retirement.

If the parties desire to have the nonmember spouse's interest revert back to the member after the nonmember spouse's death, instead of continuing to the nonmember spouse's beneficiary for the life of the member, paragraph 10 will need to be changed to provide for this provision.

Paragraph 11: **SUPPLEMENTAL PROVISIONS:** Apply to orders A, B and C. Please refer to page 19 for instructions on paragraph 11 through 21.

Again, if any portion of ORDER B is unacceptable to the parties, model ORDER A, separation of accounts provides the nonmember spouse with the right to retire, if the member was vested as of the date of dissolution, and receive a monthly allowance when both parties reach the minimum retirement age. The nonmember would have the right at retirement to select an optional settlement which would provide either a lump sum benefit or a monthly allowance to a beneficiary, upon the nonmember's death.

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ORDER C **RETIRED MEMBERS ONLY**

ORDER C illustrates the standard method for dividing the member's monthly retirement allowance between the member and the nonmember spouse and also addresses how any death benefits are to be divided.

It is important that the parties understand the effect that a dissolution of marriage may have on the benefits the member selected at retirement and on the death benefits which may be payable, particularly if the survivor continuance benefit is applicable. If you are unable to determine whether or not the survivor continuance benefit is applicable, this information may be obtained from CalPERS. Please see page 3, Request for Information, for instructions on how to obtain information from CalPERS.

The survivor continuance benefit provides a monthly allowance payable by statute to certain "eligible survivors." An eligible survivor, for purposes of the survivor continuance benefit, is defined under the PERL as a surviving spouse who was married to the member for a continuous period beginning at least one year (or less than one year in certain cases) prior to the member's effective retirement date and ending on the date of the member's death. If there is no surviving spouse, the benefit can be paid to the member's minor children.

Upon dissolution of marriage, a nonmember spouse ceases to be the "surviving spouse" for purposes of the survivor continuance benefit and would no longer be eligible to receive this benefit upon the member's death. **A NONMEMBER SPOUSE CANNOT BE CONSIDERED A "SURVIVING SPOUSE" FOR ANY PURPOSE UNDER THE PERL.**

Paragraph 5: States that the community has an interest in the member's retirement benefits and defines that interest as those retirement benefits attributable to the service credit accrued by the member during the period from the parties' date of marriage up to the date of separation, or retirement, whichever is earlier. A member ceases to accrue service credit at retirement.

Paragraph 6: Provides the amount of the monthly benefit currently being paid to the member, the option selected, and the member's named beneficiary, if any. This information may be obtained from CalPERS. Please see page 3, Request for Information, for instructions on how to obtain information from CalPERS.

If the nonmember spouse was named as a beneficiary under optional settlement 2, 2W, 3, 3W or 4, the member cannot change his or her beneficiary or his or her option unless the entire interest in the pension plan is awarded to the member as his or her sole and separate property.

Paragraph 7: Sets forth how the nonmember spouse's share of the member's retirement benefits are to be calculated. The benefit allocation formula described in the model is only an example. The parties may, of course, provide another method (or percentage) of allocating the member's retirement benefits among the parties provided the method is consistent with the terms of the PERL and other applicable law.

Paragraph 8: Provides that benefit payments will commence to the nonmember spouse by separate check as soon as administratively practicable following the date CalPERS determines that the order is acceptable.

Paragraph 9: The nonmember spouse's "System Interest" in the member's monthly retirement allowance will cease to be payable upon the death of the member. Paragraph 9 provides for the nonmember spouse to receive his or her "System Interest" in any lump sum death benefit payable upon the death of the member after retirement. Paragraph 9 also provides for the nonmember spouse to receive his or her "System Interest" in any monthly allowance payable after the death of the member, unless the nonmember spouse is entitled to receive a monthly benefit for his or her own life based on the member's election and designation of the nonmember spouse as a beneficiary under optional settlement 2, 2W, 3, 3W or 4.

CalPERS will divide any benefit payable after the member's death, including any monthly allowance, but only as long as those benefits are payable. Of course, if no benefits are payable after the member's death, there will be no benefits from which to pay the nonmember spouse's System Interest.

The parties and their counsel may wish to review the member's election and beneficiary designation, and the applicable member booklet in order to determine which of the post-retirement death benefits are applicable with respect to the member or whether this paragraph is applicable.

Paragraph 10: Illustrates how the parties may provide for the nonmember spouse's System Interest to be paid to a beneficiary if the nonmember spouse should die **and** benefits are still payable to the member. Should the parties elect to make such a provision, CalPERS must be provided, either in the order or in a separate document, with the beneficiary's name, current mailing address and Social Security number. If the beneficiary predeceases the nonmember spouse, any "System Interest" shall be paid to the nonmember spouse's next of kin as provided under Government Code section 21493.

If the parties desire to have the nonmember spouse's interest revert back to the member after the nonmember spouse's death instead of continuing to the nonmember spouse's beneficiary for the life of the member, paragraph 10 will need to be changed to provide for this provision.

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SUPPLEMENTAL PROVISIONS: ALL ORDERS

The following provisions are commonly included in orders affecting a member's benefits. The parties and their counsel should review these provisions to determine whether such provisions are consistent with the parties' objectives.

Paragraph 11: Provides that the nonmember spouse's "System Interest" in any monthly allowance will increase with any cost-of-living increase or other similar increases in accordance with the terms of the PERL.

Paragraph 12: Standard language in accordance with the terms of the Internal Revenue Code.

Paragraph 13: Indicate the member's full name, current mailing address, telephone number, Social Security number and date of birth.*

Paragraph 14: Indicate the nonmember spouse's full name, current mailing address, telephone number, Social Security number and date of birth.*

Paragraph 15: Sets forth information about the administration of the System and the manner in which the nonmember spouse is to communicate with the System.

* The member and nonmember spouse's social security number, date of birth, and current mailing address **MUST** be provided to CalPERS. If this information is not included in the ORDER because of security concerns, it **MUST** be provided to CalPERS in a separate document at the time the order is submitted to CalPERS.

Paragraph 16: Standard language in accordance with the terms of the PERL.

Paragraph 17: Provides that the System may provide the nonmember spouse and/or his or her agents and attorneys with information regarding the member's benefits until such time as the nonmember spouse has received his or her entire interest in the System.

Paragraph 18: Contains standard language in accordance with the terms of the PERL and other applicable law.

Paragraph 19: Is designed to address the situation where alternate payee or participant receive funds to which the other is entitled under the order.

Paragraph 20: Provides for amending the order in the event subsequent changes to applicable law result in the order no longer being acceptable to the System. Paragraph 20 further provides that the nonmember spouse and the member shall be responsible for any of the costs and/or expenses associated with any such amendment.

Paragraph 21: Provides for amending the court's continuing jurisdiction to modify the order in any and all necessary respects. IMPORTANT: In the event such modification proves necessary or advisable, any related fees, taxes and/or penalties will be assessed against the parties who then have an interest payable from the System.

_____ * * * * _____

IMPORTANT: CalPERS' model order includes a signature block for the approval of the order by CalPERS staff. CalPERS will sign the order only after it has been signed by both parties. Model orders which have been modified should be sent to CalPERS in draft form with a cover letter explaining which provisions were changed.

1 [NAME OF COUNSEL]
2 [ADDRESS OF COUNSEL]
3 [CITY, STATE]
4 [PHONE NUMBER]

5 ATTORNEY FOR [PETITIONER/RESPONDENT]

6 MODEL ORDER PROVISIONS*

7 CAUTION: THE DISPOSITION OF RETIREMENT BENEFITS IN DOMESTIC RELATIONS PROCEEDINGS INVOLVES COMPLEX
8 MARITAL RIGHTS AND TAX ISSUES. THE FOLLOWING IS A MODEL ORDER WHICH DEMONSTRATES SEVERAL METHODS OF
9 SPLITTING RETIREMENT BENEFITS PROVIDED TO MEMBERS OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT
10 SYSTEM. OTHER METHODS OF SPLITTING SUCH BENEFITS ARE AVAILABLE AND THIS MODEL ORDER MAY BE
11 INAPPROPRIATE FOR YOU.

12 THIS SAMPLE IS PROVIDED AS A COURTESY ONLY, AS NEITHER THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT
13 SYSTEM, NOR ITS AGENTS OR CONSULTANTS ARE AUTHORIZED TO GIVE LEGAL ADVICE AND THEY MAKE NO
14 REPRESENTATION AS TO ITS SUFFICIENCY UNDER APPLICABLE FEDERAL OR STATE LAW OR AS TO ITS LEGAL
15 CONSEQUENCES.

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 COUNTY OF _____

| | |
|----------------------------------|-----------------------------------|
| 18 _____) | Case No. _____ |
| 19 In re the Marriage of _____) | |
| 20 Petitioner: _____) | MODEL ORDER A |
| 21 and _____) | <u>STIPULATED DOMESTIC</u> |
| 22 Respondent: _____) | <u>RELATIONS ORDER RE:</u> |
| 23 _____) | <u>DIVISION OF CALIFORNIA</u> |
| 24 _____) | <u>PUBLIC EMPLOYEES'</u> |
| 25 _____) | <u>RETIREMENT SYSTEM BENEFITS</u> |
| 26 _____) | |

27 Petitioner, _____, and Respondent,
28 _____, and the Board of Administration of the
California Public Employees' Retirement System
("Administrator") as administrator of the Public Employees'
Retirement System ("CalPERS" or "System") hereby stipulate
as follows:

29 _____
* These provisions reflect California community property law and may need
to be revised to accommodate other state domestic relations laws. Please
refer to the instructions that accompany this model order.

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RECITALS

1. Petitioner and Respondent were married to each other on _____. They separated on _____, and this Court entered a judgment of dissolution of marriage in the action on _____.

2. This Court has personal jurisdiction over both Petitioner and Respondent and jurisdiction over the subject matter of this Order and the dissolution of marriage action.

3. CalPERS was properly joined as a party to the Petitioner and Respondent's dissolution of marriage action pursuant to sections 2060 through 2065 of the California Family Code.

STIPULATION

This Order is acceptable under the Public Employees' Retirement Law ("PERL"), which is set forth at section 20000, et seq., of the California Government Code.

IT IS HEREBY ORDERED BY THE COURT THAT:

4. This Order is entered pursuant to the California Family Code.

5. **[Respondent or Petitioner]** ("Member") and **[Respondent or Petitioner]** ("Nonmember Spouse") have acquired a community interest in the Member's accumulated retirement contributions and service credit attributable to periods of service in the System during the period from the Date of Marriage up to the Date of Separation.

1 6. Pursuant to section 21290 of the California
2 Government Code, the Court allocates and awards to the
3 Nonmember Spouse 50% of the accumulated retirement
4 contributions and service credit attributable to the
5 Member's service in the System during the period from the
6 Date of Marriage up to the Date of Separation ("System
7 Interest") as the Nonmember Spouse's sole and separate
8 property. All accumulated retirement contributions and
9 service credit attributable to the Member's service in the
10 System not awarded to the Nonmember Spouse pursuant to this
11 Order shall be the Member's sole and separate property.

12 7. Pursuant to section 21290(b) of the California
13 Government Code, the Administrator shall divide the Member's
14 accumulated retirement contributions and service credit in
15 accordance with Paragraph 6 of this Order and establish a
16 separate and distinct account for the interest awarded to
17 the Member and the Nonmember Spouse as soon as
18 administratively practicable after the Administrator
19 determines that this Order is acceptable under the PERL.

20 8. From and after the date that the Administrator has
21 divided the Member's accumulated retirement contributions
22 and service credit pursuant to Paragraph 7 of this Order,
23 the Nonmember Spouse shall be entitled to all applicable
24 rights permitted under section 21290(c) of the California
25 Government Code, including:

26 a. The right to a service retirement allowance,
27 including the right to elect an optional settlement and the
28 right to name a beneficiary, provided that the Nonmember

1 Spouse is otherwise eligible for such an allowance in
2 accordance with section 21295 of the California Government
3 Code;

4 b. The right to a refund of that portion of the
5 Nonmember Spouse's System Interest which represents
6 accumulated Member retirement contributions in accordance
7 with section 21292 of the California Government Code,
8 including any interest which has accrued on such
9 contributions through the date of payment;

10 c. The right to redeposit the **Nonmember's**
11 System Interest in any accumulated retirement contributions
12 attributable to the Member's service during the period from
13 the Date of Marriage up to the Date of Separation which
14 would otherwise have been eligible for redeposit by the
15 Member under sections 20750 and 20752 of the California
16 Government Code, in accordance with section 21293 of the
17 California Government Code;

18 d. The right to purchase the **Nonmember's** System
19 Interest in any additional service credit earned during the
20 period from the Date of Marriage up to the Date of
21 Separation which would otherwise have been eligible for
22 purchase by the Member under Article 4 (commencing with
23 section 20990 of the California Government Code) and Article
24 5 (commencing with section 21020 of the California
25 Government Code) of Chapter 11, in accordance with section
26 21294 of the California Government Code;

27 e. The right to designate a beneficiary to
28 receive that portion of the Nonmember Spouse's System

1 Interest which represents accumulated Member contributions
2 and any interest on such contributions payable at death
3 prior to the Nonmember Spouse's retirement and to receive
4 any unpaid monthly retirement allowance payable at death
5 after the Nonmember Spouse's retirement; and

6 9. If the Nonmember Spouse fails to designate a
7 beneficiary pursuant to paragraph 8.e. of this Order or the
8 designated beneficiary does not survive the Nonmember
9 Spouse, any portion of the Nonmember Spouse's System
10 Interest which is payable after his or her death shall be
11 paid in accordance with section 21493 of the California
12 Government Code.

13 10. Notwithstanding any other provision of this Order,
14 if the Member does not have the necessary minimum credited
15 service to retire as of the date of dissolution or legal
16 separation, the Nonmember Spouse shall receive a refund of
17 that portion of the Nonmember Spouse's System Interest which
18 represents accumulated Member contributions and any interest
19 that has accrued to such contributions as soon as
20 administratively practicable following the date an account
21 was established for the Nonmember Spouse pursuant to
22 paragraph 7 of this Order in accordance with section
23 21292(g) of the California Government Code.

24 11. The Nonmember Spouse's System Interest will be
25 applied to any cost-of-living increases or other similar
26 increases, but only to the extent permitted under the PERL.

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1 12. The Member and the Nonmember Spouse shall be
2 responsible for and pay any taxes due in connection with his
3 or her receipt of distributions from the System.

4 13. Member's Name. For purposes of making any benefit
5 payments provided by the terms of this Order or providing
6 any notice required by the terms of this Order, Member's
7 name, current mailing address, telephone number, Social
8 Security number and date of birth are as follows:

9 Name: _____

10 Address: _____

11 _____

12 Telephone No.: (_____)_____

13 Social Security Number: ____-____-____

14 Date of Birth: _____

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16 14. Nonmember Spouse's Name. For purposes of making
17 any benefit payments required by the terms of this Order or
18 providing any notice required by the terms of this Order,
19 the Nonmember Spouse's name, current mailing address,
20 telephone number, Social Security number and date of birth
21 are as follows:

22 Name: _____

23 Address: _____

24 _____

25 Telephone No.: (_____)_____

26 Social Security Number: ____-____-____

27 Date of Birth: _____

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2 15. Notice of change of address shall be made in
3 writing to the System, addressed as follows, or as the
4 Administrator may specify in a written notice to Nonmember
5 Spouse:

6 California Public Employees' Retirement System
7 Attn: Community Property Unit
8 P.O. Box 2056
 Sacramento, CA 95812-2056

9 Notice of change of address or telephone number shall be
10 made in writing to the Administrator, addressed as indicated
11 above, or as the Administrator may specify in a written
12 notice to the Nonmember Spouse. No notice or document shall
13 be deemed to be given to the System unless such notice or
14 document is sent by certified mail, return receipt
15 requested, at the above address.

16 16. The Member and the Nonmember Spouse shall sign all
17 forms, letters and other documents as required to effect the
18 distribution(s) described herein and the intent of this
19 Order.

20 17. The Nonmember Spouse, the Nonmember Spouse's
21 agents and attorneys are authorized to receive any and all
22 information concerning the Member's benefits until such time
23 as the Nonmember Spouse has received the Nonmember Spouse's
24 System Interest.

25 18. Notwithstanding any other provision of this Order,
26 the Order shall not be construed as to require the System:

27 (a) to provide any form of benefit or any option
28 not otherwise provided under the PERL;

1 (b) to provide increased benefits (as determined
2 based on actuarial value) not available to the Member;

3 (c) to provide benefits to the Nonmember Spouse
4 which are required to be paid to another nonmember spouse
5 under another Order previously entered by a Court of
6 competent jurisdiction and acceptable under the PERL;

7 (d) to provide payment to the Nonmember Spouse of
8 benefits forfeited by the Member; or

9 (e) to change the benefit election of the Member
10 once the Member has retired.

11 19. It is further ORDERED that the Member shall act as
12 constructive trustee of any benefits assigned to the
13 Nonmember Spouse under this Order which may be paid to or
14 received by the Member. The Member, as trustee, shall
15 promptly pay or transmit any such benefits to the Nonmember
16 Spouse at the Nonmember Spouse's last known address. It is
17 also ORDERED that the Nonmember Spouse shall act as
18 constructive trustee of any benefits assigned to the Member
19 under this Order which may be paid to or received by the
20 Nonmember Spouse. The Nonmember Spouse, as trustee, shall
21 promptly pay or transmit any such benefits to the Member at
22 the Member's last known address.

23 20. This Order shall be administered and interpreted
24 in conformity with the PERL and other applicable law. If
25 the PERL is amended, then Member and the Nonmember Spouse
26 shall immediately take the steps necessary to amend this
27 Order to comply with any such amendments, changes and/or
28 modifications, or, if permissible under any such change,

1 amendment, or modification to the PERL, the Administrator
2 may treat this Order as acceptable. The Member and the
3 Nonmember Spouse shall be responsible for any of the costs
4 and/or expenses associated with any such amendment.

5 21. The Member, the Nonmember Spouse, the
6 Administrator, and the Court intend that this Order meets
7 all requirements of a domestic relations order under the
8 PERL and other laws of the State of California, and the
9 Court shall reserve jurisdiction to modify this Order for
10 the purpose of meeting or monitoring its implementation.
11 The Court's reservation of jurisdiction shall be liberally
12 construed to effect the provisions of this Order and to
13 resolve any disputes that may arise among the parties and
14 the Administrator concerning benefit payments or any other
15 aspect of this Order. If any portion of this Order is
16 rendered invalid, illegal, unconstitutional or otherwise
17 unenforceable, the Court reserves jurisdiction to make an
18 appropriate adjustment to effectuate the intent of the
19 parties. Any future fees, taxes, and/or penalties will be
20 assessed against the parties who then have an interest
21 payable from the System.

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It is so Stipulated:

Dated: _____

[NAME]
Petitioner

Dated: _____

[NAME]
Attorney for Petitioner

Dated: _____

[NAME]
Respondent

Dated: _____

[NAME]
Attorney for Respondent

Dated: _____

Administrator of the California
Public Employees' Retirement
System.

ORDER

The parties having stipulated thereto and good cause
appearing therefore.

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT

1 [NAME OF COUNSEL]
2 [ADDRESS OF COUNSEL]
3 [CITY, STATE]
4 [PHONE NUMBER]

5 ATTORNEY FOR [PETITIONER/RESPONDENT]

6 MODEL ORDER PROVISIONS*

7 CAUTION: THE DISPOSITION OF RETIREMENT BENEFITS IN DOMESTIC RELATIONS PROCEEDINGS INVOLVES COMPLEX
8 MARITAL RIGHTS AND TAX ISSUES. THE FOLLOWING IS A MODEL ORDER WHICH DEMONSTRATES SEVERAL METHODS OF
9 SPLITTING RETIREMENT BENEFITS PROVIDED TO MEMBERS OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT
10 SYSTEM. OTHER METHODS OF SPLITTING SUCH BENEFITS ARE AVAILABLE AND THIS MODEL ORDER MAY BE
11 INAPPROPRIATE FOR YOU.

12 THIS SAMPLE IS PROVIDED AS A COURTESY ONLY, AS NEITHER THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT
13 SYSTEM, NOR ITS AGENTS OR CONSULTANTS ARE AUTHORIZED TO GIVE LEGAL ADVICE AND THEY MAKE NO
14 REPRESENTATION AS TO ITS SUFFICIENCY UNDER APPLICABLE FEDERAL OR STATE LAW OR AS TO ITS LEGAL
15 CONSEQUENCES.

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 COUNTY OF _____

| | |
|----------------------------------|-----------------------------------|
| 18 _____) | Case No. _____ |
| 19 In re the Marriage of _____) | |
| 20 Petitioner: _____) | MODEL ORDER B |
| 21 and _____) | <u>STIPULATED DOMESTIC</u> |
| 22 Respondent: _____) | <u>RELATIONS ORDER RE:</u> |
| 23 _____) | <u>DIVISION OF CALIFORNIA</u> |
| 24 _____) | <u>PUBLIC EMPLOYEES'</u> |
| 25 _____) | <u>RETIREMENT SYSTEM BENEFITS</u> |
| 26 _____) | |

27 Petitioner, _____, and Respondent,
28 _____, and the Board of Administration of the
California Public Employees' Retirement System
("Administrator") as administrator of the Public Employees'
Retirement System ("CalPERS" or "System") hereby stipulate
as follows:

29 _____
* These provisions reflect California community property law and may need
to be revised to accommodate other state domestic relations laws. Please
refer to the instructions that accompany this model order.

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RECITALS

1. Petitioner and Respondent were married to each other on _____. They separated on _____, and this Court entered a judgment of dissolution of marriage in the action on _____.

2. This Court has personal jurisdiction over both Petitioner and Respondent and jurisdiction over the subject matter of this Order and the dissolution of marriage action.

3. CalPERS was properly joined as a party to the Petitioner and Respondent's dissolution of marriage action pursuant to sections 2060 through 2065 of the California Family Code.

STIPULATION

This Order is acceptable under the Public Employees' Retirement Law ("PERL"), which is set forth at section 20000, et seq., of the California Government Code.

IT IS HEREBY ORDERED BY THE COURT THAT:

4. This Order is entered pursuant to the California Family Code.

5. **[Respondent or Petitioner]** ("Member") and **[Respondent or Petitioner]** ("Nonmember Spouse") have acquired a community interest in the Member's retirement benefits attributable to periods of service in the System from the Date of Marriage up to the Date of Separation.

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The Court allocates and awards to the Nonmember Spouse an interest in any and all of the Member's "retirement benefits" calculated as follows:

$$\text{Retirement Benefits} \times \frac{\text{Member's credited service in the System from Date of Marriage until Date of Separation}}{\text{Member's total credited service in the System}} \times 50\% = \text{Nonmember Spouse's System Interest}$$

For purposes of this Order, the term "retirement benefits" shall include any refund of the Member's accumulated retirement contributions, any service retirement benefits, any disability retirement benefits, any industrial disability retirement benefits and any death benefits (as provided in paragraph 9 a. and b. of this ORDER). The portion of the Member's retirement benefits which are allocated and awarded to the Nonmember Spouse pursuant to the terms of this paragraph shall hereinafter be referred to as the Nonmember Spouse's "System Interest." All retirement benefits attributable to the Member's service in the System not awarded to the Nonmember Spouse pursuant to this Order shall be the Member's sole and separate property.

7. Form of Retirement Benefit.

At the time the Member retires, the Member Spouse shall elect Optional Settlement method no. 4, naming the Nonmember Spouse as beneficiary to the extent of his or her community property interest. The community property interest will be determined at the Member's retirement based on the formula provided in paragraph 6.

1 8. Commencement of Benefits to the Nonmember Spouse.

2 The Nonmember Spouse shall commence to receive the
3 Nonmember Spouse's System Interest by separate warrant
4 directly from the System beginning on the earlier of the
5 date the Member commences to receive his or her retirement
6 benefits or as soon as administratively practicable
7 following the Member's death.

8 9. Benefits payable at Member's Death.

9 a. Pre-retirement death benefits.

10 If the Member dies prior to retirement, the
11 Administrator shall pay by separate warrant, directly to the
12 Nonmember Spouse, the Nonmember Spouse's System Interest as
13 applied to any death benefit payable as a result of the
14 Member's death, whether lump sum or monthly.

15 b. Post-retirement death benefits.

16 If the Member dies after retirement, and a lump sum
17 death benefit is payable from the System, the Administrator
18 shall pay by separate warrant, directly to the Nonmember
19 Spouse, the Nonmember Spouse's System Interest as applied to
20 such benefit. In addition to any lump sum death benefit
21 which may be payable to the Nonmember Spouse pursuant to the
22 preceding sentence, if the Nonmember Spouse was not
23 designated as beneficiary under an optional settlement and
24 thus, not entitled to a monthly allowance in his or her own
25 right, the Administrator shall pay by separate warrant
26 directly to the Nonmember Spouse the Nonmember Spouse's
27 System Interest in any monthly allowance otherwise payable
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1 for as long as that benefit is payable to the Member's
2 beneficiary or survivor.

3 10. Benefits Payable at Nonmember Spouse's Death.

4 If the Nonmember Spouse dies prior to the time that the
5 Nonmember Spouse has received or commences to receive the
6 Nonmember Spouse's System Interest, and benefits are payable
7 to the Member at any time in the future, the Administrator
8 shall pay the Nonmember Spouse's System Interest to the
9 beneficiary named below by separate warrant directly to such
10 beneficiary as soon as administratively practicable after
11 the date that benefits are payable. If the designated
12 beneficiary is not living at the time benefits are payable,
13 such Interest shall be paid in accordance with section 21493
14 of the California Government Code.

15 Beneficiary: _____

16 Address: _____

17 _____

18 Social Security Number: ____-____-_____

19 11. The Nonmember Spouse's System Interest will be
20 applied to any cost-of-living increases or other similar
21 increases, but only to the extent permitted under the PERL.

22 12. The Member and the Nonmember Spouse shall be
23 responsible for and pay any taxes due in connection with his
24 or her receipt of distributions from the System.

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1 13. Member's Name. For purposes of making any benefit
2 payments provided by the terms of this Order or providing
3 any notice required by the terms of this Order, Member's
4 name, current mailing address, telephone number, Social
5 Security number and date of birth are as follows:

6 Name: _____
7 Address: _____
8 _____
9 Telephone No.: (____)_____
10 Social Security Number: ____-____-_____
11 Date of Birth: _____
12

13 14. Nonmember Spouse's Name. For purposes of making
14 any benefit payments required by the terms of this Order or
15 providing any notice required by the terms of this Order,
16 the Nonmember Spouse's name, current mailing address,
17 telephone number, Social Security number and date of birth
18 are as follows:

19 Name: _____
20 Address: _____
21 _____
22 Telephone No.: (____)_____
23 Social Security Number: ____-____-_____
24 Date of Birth: _____

25 15. Notice of change of address shall be made in
26 writing to the System, addressed as follows, or as the
27 Administrator may specify in a written notice to Nonmember
28 Spouse:

1 California Public Employees' Retirement System
2 Attn: Community Property Unit
3 P.O. Box 2056
Sacramento, CA 95812-2056

4 Notice of change of address or telephone number shall be
5 made in writing to the Administrator, addressed as indicated
6 above, or as the Administrator may specify in a written
7 notice to the Nonmember Spouse. No notice or document shall
8 be deemed to be given to the System unless such notice or
9 document is sent by certified mail, return receipt
10 requested, at the above address.

11 16. The Member and the Nonmember Spouse shall sign all
12 forms, letters and other documents as required to effect the
13 distribution(s) described herein and the intent of this
14 Order.

15 17. The Nonmember Spouse, the Nonmember Spouse's
16 agents and attorneys are authorized to receive any and all
17 information concerning the Member's benefits until such time
18 as the Nonmember Spouse has received the Nonmember Spouse's
19 System Interest.

20 18. Notwithstanding any other provision of this Order,
21 the Order shall not be construed as to require the System:

22 (a) to provide any form of benefit or any option
23 not otherwise provided under the PERL;

24 (b) to provide increased benefits (as determined
25 based on actuarial value) not available to the Member;

26 (c) to provide benefits to the Nonmember Spouse
27 which are required to be paid to another nonmember spouse
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1 under another Order previously entered by a Court of
2 competent jurisdiction and acceptable under the PERL;

3 (d) to provide payment to the Nonmember Spouse of
4 benefits forfeited by the Member; or

5 (e) to change the benefit election of the Member
6 once the Member has retired.

7 19. It is further ORDERED that the Member shall act as
8 constructive trustee of any benefits assigned to the
9 Nonmember Spouse under this Order which may be paid to or
10 received by the Member. The Member, as trustee, shall
11 promptly pay or transmit any such benefits to the Nonmember
12 Spouse at the Nonmember Spouse's last known address. It is
13 also ORDERED that the Nonmember Spouse shall act as
14 constructive trustee of any benefits assigned to the Member
15 under this Order which may be paid to or received by the
16 Nonmember Spouse. The Nonmember Spouse, as trustee, shall
17 promptly pay or transmit any such benefits to the Member at
18 the Member's last known address.

19 20. This Order shall be administered and interpreted
20 in conformity with the PERL and other applicable law. If
21 the PERL is amended, then Member and the Nonmember Spouse
22 shall immediately take the steps necessary to amend this
23 Order to comply with any such amendments, changes and/or
24 modifications, or, if permissible under any such change,
25 amendment, or modification to the PERL, the Administrator
26 may treat this Order as acceptable. The Member and the
27 Nonmember Spouse shall be responsible for any of the costs
28 and/or expenses associated with any such amendment.

1 21. The Member, the Nonmember Spouse, the
2 Administrator, and the Court intend that this Order meets
3 all requirements of a domestic relations order under the
4 PERL and other laws of the State of California, and the
5 Court shall reserve jurisdiction to modify this Order for
6 the purpose of meeting or monitoring its implementation.
7 The Court's reservation of jurisdiction shall be liberally
8 construed to effect the provisions of this Order and to
9 resolve any disputes that may arise among the parties and
10 the Administrator concerning benefit payments or any other
11 aspect of this Order. If any portion of this Order is
12 rendered invalid, illegal, unconstitutional or otherwise
13 unenforceable, the Court reserves jurisdiction to make an
14 appropriate adjustment to effectuate the intent of the
15 parties. Any future fees, taxes, and/or penalties will be
16 assessed against the parties who then have an interest
17 payable from the System.

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It is so Stipulated:

Dated: _____

[NAME]
Petitioner

Dated: _____

[NAME]
Attorney for Petitioner

Dated: _____

[NAME]
Respondent

Dated: _____

[NAME]
Attorney for Respondent

Dated: _____

Administrator of the California
Public Employees' Retirement
System.

ORDER

The parties having stipulated thereto and good cause
appearing therefore.

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT

1 [NAME OF COUNSEL]
2 [ADDRESS OF COUNSEL]
3 [CITY, STATE]
4 [PHONE NUMBER]

5 ATTORNEY FOR [PETITIONER/RESPONDENT]

6 MODEL ORDER PROVISIONS*

7 CAUTION: THE DISPOSITION OF RETIREMENT BENEFITS IN DOMESTIC RELATIONS PROCEEDINGS INVOLVES COMPLEX
8 MARITAL RIGHTS AND TAX ISSUES. THE FOLLOWING IS A MODEL ORDER WHICH DEMONSTRATES SEVERAL METHODS OF
9 SPLITTING RETIREMENT BENEFITS PROVIDED TO MEMBERS OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT
10 SYSTEM. OTHER METHODS OF SPLITTING SUCH BENEFITS ARE AVAILABLE AND THIS MODEL ORDER MAY BE
11 INAPPROPRIATE FOR YOU.

12 THIS SAMPLE IS PROVIDED AS A COURTESY ONLY, AS NEITHER THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT
13 SYSTEM, NOR ITS AGENTS OR CONSULTANTS ARE AUTHORIZED TO GIVE LEGAL ADVICE AND THEY MAKE NO
14 REPRESENTATION AS TO ITS SUFFICIENCY UNDER APPLICABLE FEDERAL OR STATE LAW OR AS TO ITS LEGAL
15 CONSEQUENCES.

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 COUNTY OF _____

| | |
|----------------------------------|-----------------------------------|
| 18 _____) | Case No. _____ |
| 19 In re the Marriage of _____) | |
| 20 Petitioner: _____) | MODEL ORDER C |
| 21 and _____) | <u>STIPULATED DOMESTIC</u> |
| 22 Respondent: _____) | <u>RELATIONS ORDER RE:</u> |
| 23 _____) | <u>DIVISION OF CALIFORNIA</u> |
| 24 _____) | <u>PUBLIC EMPLOYEES'</u> |
| 25 _____) | <u>RETIREMENT SYSTEM BENEFITS</u> |
| 26 _____) | |

27 Petitioner, _____, and Respondent,
28 _____, and the Board of Administration of the
California Public Employees' Retirement System
("Administrator") as administrator of the Public Employees'
Retirement System ("CalPERS" or "System") hereby stipulate
as follows:

29 _____
* These provisions reflect California community property law and may need
to be revised to accommodate other state domestic relations laws. Please
refer to the instructions that accompany this model order.

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RECITALS

1. Petitioner and Respondent were married to each other on _____. They separated on _____, and this Court entered a judgment of dissolution of marriage in the action on _____.

2. This Court has personal jurisdiction over both Petitioner and Respondent and jurisdiction over the subject matter of this Order and the dissolution of marriage action.

3. CalPERS was properly joined as a party to the Petitioner and Respondent's dissolution of marriage action pursuant to sections 2060 through 2065 of the California Family Code.

STIPULATION

This Order is acceptable under the Public Employees' Retirement Law ("PERL"), which is set forth at section 20000, et seq., of the California Government Code.

IT IS HEREBY ORDERED BY THE COURT THAT:

4. This Order is entered pursuant to the California Family Code.

5. **[Respondent or Petitioner]** ("Member") and **[Respondent or Petitioner]** ("Nonmember Spouse") have acquired a community interest in the Member's monthly retirement benefits attributable to periods of service in the System from the Date of Marriage up to the Date of Separation or Date of Retirement, whichever occurs first.

6. The Member is currently receiving \$ _____ **[Enter amount]** a month under option _____ **[Enter option selected at retirement]** with _____ **[Name of**

1 **Beneficiary]** named as beneficiary of any benefits payable
2 under such option at the Member's death.

3 7. Calculation of Nonmember Spouse's Interest.

4 The Court allocates and awards to the Nonmember Spouse
5 an interest in any and all of the Member's "retirement
6 benefits" calculated as follows:

$$\begin{array}{rcccl} \text{Retirement} & & \text{Member's credited service} & & \\ \text{Benefits} & \times & \text{in the System from Date of} & & \text{Nonmember} \\ & & \text{Marriage until Date of} & & \text{Spouse's} \\ & & \text{Separation} & & \text{System} \\ & & \text{Member's total credited} & \times 50\% = & \text{Interest} \\ & & \text{service in the System} & & \end{array}$$

10

11 For purposes of this Order, the term "retirement benefits"
12 shall include any service retirement benefits, any
13 industrial disability retirement benefits, any disability
14 retirement benefits and any death benefits (as provided in
15 paragraph 9 of this Order). The portion of the Member's
16 retirement benefits which are allocated and awarded to the
17 Nonmember Spouse pursuant to the terms of this paragraph
18 shall hereinafter be referred to as the Nonmember Spouse's
19 "System Interest." All retirement benefits attributable to
20 the Member's service in the System not awarded to the
21 Nonmember Spouse pursuant to this Order shall be the
22 Member's sole and separate property.

23 8. Commencement of Benefits to the Nonmember Spouse.

24 The Nonmember Spouse shall commence to receive the
25 Nonmember Spouse's System Interest by separate warrant
26 directly from the System as soon as administratively
27 practicable following the date the Administrator determines
28 that this Order is acceptable under the PERL.

1 9. Benefits payable at Member's Death.

2 Upon the Member's death after retirement, and if a lump
3 sum death benefit is payable from the System, the
4 Administrator shall pay by separate warrant, directly to the
5 Nonmember Spouse, the Nonmember Spouse's System Interest as
6 applied to such benefit. In addition to any lump sum death
7 benefit which may be payable to the Nonmember Spouse
8 pursuant to the aforementioned sentence, if the Nonmember
9 Spouse was not designated as beneficiary under an optional
10 settlement and thus, not entitled to a monthly allowance in
11 his or her own right, the Administrator shall pay by
12 separate warrant, directly to the Nonmember Spouse, the
13 Nonmember Spouse's System Interest as applied to any monthly
14 allowance otherwise payable for as long as the benefit is
15 payable to the Member's beneficiary or survivor.

16 10. Benefits Payable at Nonmember Spouse's Death. If
17 benefits are still payable to the Member at the time of the
18 Nonmember Spouse's death, the Administrator shall continue
19 to pay the Nonmember Spouse's System Interest by separate
20 warrant directly to the beneficiary named below. If such
21 beneficiary does not survive the Nonmember Spouse, such
22 Interest shall be paid in accordance with section 21493 of
23 the California Government Code.

24 Beneficiary: _____

25 Address: _____

26 _____

27 Social Security Number: ____-____-____

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1 11. The Nonmember Spouse's System Interest will be
2 applied to any cost-of-living increases or other similar
3 increases, but only to the extent permitted under the PERL.

4 12. The Member and the Nonmember Spouse shall be
5 responsible for and pay any taxes due in connection with his
6 or her receipt of distributions from the System.

7 13. Member's Name. For purposes of making any benefit
8 payments provided by the terms of this Order or providing
9 any notice required by the terms of this Order, Member's
10 name, current mailing address, telephone number, Social
11 Security number and date of birth are as follows:

12 Name: _____

13 Address: _____

14 _____

15 Telephone No.: (____)_____

16 Social Security Number: ____-____-_____

17 Date of Birth: _____

18 14. Nonmember Spouse's Name. For purposes of making
19 any benefit payments required by the terms of this Order or
20 providing any notice required by the terms of this Order,
21 the Nonmember Spouse's name, current mailing address,
22 telephone number, Social Security number and date of birth
23 are as follows:

24 Name: _____

25 Address: _____

26 _____

27 Telephone No.: (____)_____

28 Social Security Number: ____-____-_____

1 Date of Birth: _____

2 15. Notice of change of address shall be made in
3 writing to the System, addressed as follows, or as the
4 Administrator may specify in a written notice to Nonmember
5 Spouse:

6 California Public Employees' Retirement System
7 Attn: Community Property Unit
8 P.O. Box 2056
9 Sacramento, CA 95812-2056

10 Notice of change of address or telephone number shall be
11 made in writing to the Administrator, addressed as indicated
12 above, or as the Administrator may specify in a written
13 notice to the Nonmember Spouse. No notice or document shall
14 be deemed to be given to the System unless such notice or
15 document is sent by certified mail, return receipt
16 requested, at the above address.

17 16. The Member and the Nonmember Spouse shall sign all
18 forms, letters and other documents as required to effect the
19 distribution(s) described herein and the intent of this
20 Order.

21 17. The Nonmember Spouse, the Nonmember Spouse's
22 agents and attorneys are authorized to receive any and all
23 information concerning the Member's benefits until such time
24 as the Nonmember Spouse has received the Nonmember Spouse's
25 System Interest.

26 18. Notwithstanding any other provision of this Order,
27 the Order shall not be construed as to require the System:

28 (a) to provide any form of benefit or any option
not otherwise provided under the PERL;

1 (b) to provide increased benefits (as determined
2 based on actuarial value) not available to the Member;

3 (c) to provide benefits to the Nonmember Spouse
4 which are required to be paid to another nonmember spouse
5 under another Order previously entered by a Court of
6 competent jurisdiction and acceptable under the PERL;

7 (d) to provide payment to the Nonmember Spouse of
8 benefits forfeited by the Member; or

9 (e) to change the benefit election of the Member
10 once the Member has retired.

11 19. It is further ORDERED that the Member shall act as
12 constructive trustee of any benefits assigned to the
13 Nonmember Spouse under this Order which may be paid to or
14 received by the Member. The Member, as trustee, shall
15 promptly pay or transmit any such benefits to the Nonmember
16 Spouse at the Nonmember Spouse's last known address. It is
17 also ORDERED that the Nonmember Spouse shall act as
18 constructive trustee of any benefits assigned to the Member
19 under this Order which may be paid to or received by the
20 Nonmember Spouse. The Nonmember Spouse, as trustee, shall
21 promptly pay or transmit any such benefits to the Member at
22 the Member's last known address.

23 20. This Order shall be administered and interpreted
24 in conformity with the PERL and other applicable law. If
25 the PERL is amended, then Member and the Nonmember Spouse
26 shall immediately take the steps necessary to amend this
27 Order to comply with any such amendments, changes and/or
28 modifications, or, if permissible under any such change,

1 amendment, or modification to the PERL, the Administrator
2 may treat this Order as acceptable. The Member and the
3 Nonmember Spouse shall be responsible for any of the costs
4 and/or expenses associated with any such amendment.

5 21. The Member, the Nonmember Spouse, the
6 Administrator, and the Court intend that this Order meets
7 all requirements of a domestic relations order under the
8 PERL and other laws of the State of California, and the
9 Court shall reserve jurisdiction to modify this Order for
10 the purpose of meeting or monitoring its implementation.
11 The Court's reservation of jurisdiction shall be liberally
12 construed to effect the provisions of this Order and to
13 resolve any disputes that may arise among the parties and
14 the Administrator concerning benefit payments or any other
15 aspect of this Order. If any portion of this Order is
16 rendered invalid, illegal, unconstitutional or otherwise
17 unenforceable, the Court reserves jurisdiction to make an
18 appropriate adjustment to effectuate the intent of the
19 parties. Any future fees, taxes, and/or penalties will be
20 assessed against the parties who then have an interest
21 payable from the System.

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It is so Stipulated:

Dated: _____

[NAME]
Petitioner

Dated: _____

[NAME]
Attorney for Petitioner

Dated: _____

[NAME]
Respondent

Dated: _____

[NAME]
Attorney for Respondent

Dated: _____

Administrator of the California
Public Employees' Retirement
System.

ORDER

The parties having stipulated thereto and good cause
appearing therefore.

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT